



# HOUSE BILL No. 4448

March 4, 1993, Introduced by Reps. Dalman, Gire, Pitoniak, McBryde, Anthony, Lowe, Bobier, Cropsey, Horton, Voorhees, Jersevic, Baade, Barns, DeLange, Hill, Gubow, Curtis and Leland and referred to the Committee on Public Health.

A bill to amend section 42b of Act No. 328 of the Public Acts of 1931, entitled as amended

"The Michigan penal code,"

as added by Act No. 273 of the Public Acts of 1992, being section 750.42b of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 42b of Act No. 328 of the Public Acts of  
2 1931, as added by Act No. 273 of the Public Acts of 1992, being  
3 section 750.42b of the Michigan Compiled Laws, is amended to read  
4 as follows:

5 Sec. 42b. (1) ~~Except as provided in subsection (3), a~~ A  
6 person shall not sell or distribute a tobacco product in this  
7 state through the use of the United States mail service, express  
8 mail service, parcel post service, or any common carrier service  
9 except to persons who have previously paid or agreed to pay for

1 the products at fair market value. This subsection ~~shall~~ DOES  
2 not ~~be construed to~~ apply to any person employed by the United  
3 States postal service or by any common carrier while carrying or  
4 delivering a tobacco product mailed or shipped by another  
5 person.

6 (2) A person shall not, as part of his, her, or its busi-  
7 ness, either directly or through an agent, distribute tobacco  
8 products to persons who did not previously pay or agree to pay  
9 for the products unless all of the following provisions are met:

10 (a) The person or agent distributing the tobacco product  
11 distributes only tobacco products regularly sold or manufactured  
12 by that person or agent.

13 (b) The person distributing the tobacco product ascertains  
14 that the person receiving the tobacco product is 18 years of age  
15 or older.

16 (c) The person receiving the tobacco product is physically  
17 present to receive the product.

18 (d) Distribution is not prohibited by any local ordinance.

19 ~~(3) Subsection (1) does not prohibit the sale or distribu-~~  
20 ~~tion of a tobacco product in this state through the use of the~~  
21 ~~United States mail service, express mail service, parcel post~~  
22 ~~service, or any common carrier service if the sale or distribu-~~  
23 ~~tion is in response to a consumer complaint or is part of a~~  
24 ~~direct mail marketing of products to specifically named individu-~~  
25 ~~als, and which response or marketing involves the prior return by~~  
26 ~~the same specifically named individual of an authorization card~~  
27 ~~to the tobacco company that indicates that the individual is at~~

1 ~~least 18 years of age, is signed by the individual and is kept on~~  
2 ~~file by the tobacco company for at least 1 year.~~

3 (3) ~~(4)~~ A person who violates subsection (1) is guilty of  
4 a misdemeanor, punishable by imprisonment for not more than 1  
5 year, or by a fine of not more than \$10,000.00, or both.

6 (4) ~~(5)~~ A person who violates subsection (2) is guilty of  
7 a misdemeanor, punishable by imprisonment for not more than 90  
8 days, a fine of not more than ~~\$500.00~~ \$1,000.00, service to the  
9 community for not more than 180 days, or any combination  
10 thereof.

11 (5) ~~(6)~~ As used in this section:

12 (a) "Employed" includes engaged as an agent or independent  
13 contractor.

14 (b) "Person" means an individual, partnership, corporation,  
15 association, or other legal entity.

16 (c) "Sell or distribute" includes sending or providing free  
17 samples or any other distribution not for sale.